

1 KAREN A. OVERSTREET  
2 Chief Bankruptcy Judge  
United States Courthouse  
700 Stewart St., Suite 6310  
3 206-370-5330

4

5 UNITED STATES BANKRUPTCY COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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In re

Chapter 13

9 PAULA M. ANDRUS,

10 Bankruptcy No. 09-13123

11 Debtor.

12 \_\_\_\_\_  
13  
14 HARVEY LeSURE , Adversary No. 09-01264

15 Plaintiff.

16 v. MEMORANDUM DECISION

17  
18 PAULA M. ANDRUS ,

[NOT FOR PUBLICATION]

19 Defendant.  
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23 I. SUMMARY OF ACTION

24 This is an action by plaintiff, Harvey LeSure, to force a sale  
25 and partition of real property title in his name and the name of  
26 debtor/defendant, Paula Andrus. The property is located at 10904  
27 127<sup>th</sup> Pl. NE, Kirkland, WA (the "Property"). This matter came  
28

Decision - 1

1 before the Court for trial on June 17, 2010, and closing argument  
2 on July 7, 2010.

## **II. JURISDICTION**

4 The Court has jurisdiction of this matter pursuant to 28  
5 U.S.C. § 1334(b) and this is a core proceeding under 28 U.S.C.  
6 § 157(b)(2)(B) and (O).

### III. FINDINGS OF FACT<sup>1</sup>

8       Defendant Paula Andrus purchased the Property in 1976. In or  
9 about 1997, Ms. Andrus met plaintiff Harvey LeSure and began a  
10 relationship. Plaintiff and defendant lived together in the  
11 Property from approximately 1997 to February 2007. During this  
12 time they shared living expenses. Ms. Andrus paid the mortgages,  
13 real property taxes and insurance on the Property and Mr. LeSure  
14 paid most of the other living expenses, including groceries,  
15 alcohol, cigarettes and energy bills.

16 On July 28, 1998, Ms. Andrus executed and acknowledged before  
17 a notary public a Quit Claim Deed granting to herself and  
18 Mr. LeSure as a "gift" all right, title and interest to the  
19 Property (the "Quit Claim Deed"). Ex. P-1. Mr. LeSure paid  
20 Ms. Andrus no consideration in connection with the transfer. A  
21 year and a half later, on February 28, 2000, Ms. Andrus recorded  
22 the Quit Claim Deed with the King County Recorder. Ex. P-1.

23 While the parties lived together the Property was encumbered  
24 by a first mortgage owed to Washington Mutual and a second mortgage  
25 owed to Key Bank. In May and June of 2004, the plaintiff made the

<sup>27</sup>       <sup>1</sup> Additional findings of fact that are pertinent to a  
<sup>28</sup> particular conclusion of law are set forth under Section IV,  
Conclusions of Law.

1 monthly payments to Washington Mutual for the first mortgage on the  
2 Property because Ms. Andrus was unable to make the payments. These  
3 payments totaled \$1,248.56. Ex. P-3. In 2005. Mr. LeSure made an  
4 additional payment of \$4,138 to Key Bank to cure a default and  
5 prevent a foreclosure by Key Bank. Ex. P-4, Ex. P-5.

6 In February 2007, the relationship between Ms. Andrus and  
7 Mr. LeSure ended and Ms. Andrus obtained a protective order  
8 preventing Mr. LeSure from returning to the premises. After  
9 Mr. LeSure left the Property, however, Ms. Andrus was not able to  
10 make the payments owing to Washington Mutual and Key Bank,  
11 resulting in the commencement of foreclosure proceedings by both  
12 lenders. Ms. Andrus also allowed multiple default judgments to be  
13 entered against her and against the Property by creditors for  
14 unpaid credit card debt and encumbered the Property by granting a  
15 deed of trust in the amount of \$100,000 to the Livengood Fitzgerald  
16 and Alskog law firm on November 24, 2008. Ex. P-15, Ex. P-20.

17 In September 2008, Mr. LeSure filed an action to enjoin the  
18 lenders' foreclosure actions and a partition action as to the  
19 Property in King County Superior Court. Defendant removed that  
20 action to this Court on June 25, 2009. The primary issue in this  
21 case is whether the Property should be partitioned and sold and, if  
22 so, how the proceeds should be divided between the parties.

23 Mr. LeSure argues that the Court must judge the Quit Claim  
24 Deed on its face and must presume that Ms. Andrus intended to give  
25 half of the Property to him as a gift. Ms. Andrus argues that her  
26 intent must be judged in the context of an abusive relationship  
27 where she was pressured into signing the Quit Claim Deed.  
28 Ms. Andrus also argues that the Court must apply the committed

1 intimate relationship doctrine<sup>2</sup> and find that the only just and  
2 equitable division of the Property is to award 100% to Ms. Andrus.  
3 Alternatively, Ms. Andrus contends that Mr. LeSure was in a  
4 confidential relationship with her and had undue influence over her  
5 when she signed the Quit Claim Deed, that Mr. LeSure fraudulently  
6 acquired the Quit Claim Deed by promising to marry her, and that  
7 Mr. LeSure holds his interest in the Property, if any, in a  
8 constructive trust for her.

9 For the following reasons, the Court will enter judgment in  
10 favor of Ms. Andrus.

11 **IV. CONCLUSIONS OF LAW**

12 Based upon the foregoing findings of fact, the Court makes the  
13 following conclusions of law for purposes of Bankruptcy Rule 7052.

14 **A. Mr. LeSure's Interest in the Property as a Donee**

15 **1. The Intent of the Parties.**

16 A gift is the transfer of property with donative intent and  
17 without consideration. *Andrews v. Andrews*, 116 Wash. 513, 521, 199  
18 P. 981 (1921). The parties dispute the intent of Ms. Andrus in  
19 signing the Quit Claim Deed. Ms. Andrus argues that she did not  
20 intend to give half of the Property to Mr. LeSure. Mr. LeSure  
21 argues that the Quit Claim Deed is evidence that Ms. Andrus  
22 intended to give half of the Property to him, citing *Marken v.*  
23 *Jacobs* for the presumption that a "deed evidences the true state of  
24 title and evidence to overcome it must be clear, cogent and

25 \_\_\_\_\_  
26 <sup>2</sup> In a pretrial motion in limine, Mr. LeSure moved to dismiss  
27 Ms. Andrus' claim for equitable division of the Property under the  
28 committed relationship doctrine (formerly the meretricious  
relationship doctrine). The Court denied the motion, finding that  
the pleadings provided adequate notice to plaintiff of this claim.

1 convincing." 86 Wash. 504, 506, 150 P. 1161 (1915). Mr. LeSure  
2 argues that the Court must apply this presumption to the Quit Claim  
3 Deed and conclude that Ms. Andrus intended to give Mr. LeSure a  
4 one-half interest in the Property. The Quit Claim Deed, however,  
5 does not assign a percentage property interest to either of the  
6 parties.

7 In a rare display of consistent testimony, both parties  
8 testified that Ms. Andrus signed the Quit Claim Deed so that if  
9 something happened to her, Mr. LeSure would have a place to live.  
10 In all other respects, their testimony was completely at odds.  
11 Mr. LeSure testified that the Quit Claim Deed was not his idea and  
12 that he never asked Ms. Andrus for it. Ms. Andrus testified that  
13 Mr. LeSure promised to marry her and pressured her into drafting,  
14 signing and recording the Quit Claim Deed because once they were  
15 married, he would have a one-half interest in the Property in any  
16 case. Mr. LeSure testified that he never promised to marry  
17 Ms. Andrus. Ms. Andrus put a series of love notes into evidence,  
18 Ex. A-12, which she testified Mr. LeSure wrote and signed using  
19 affectionate nicknames. Mr. LeSure denied writing each of these  
20 notes, but provided no explanation for who wrote the notes.  
21 Ms. Andrus testified to numerous incidences where Mr. LeSure  
22 verbally and physically abused her and Mr. LeSure denied each and  
23 every such incident.

24 Considering all of the testimony, the Court finds that  
25 Mr. LeSure has little or no credibility. His testimony at trial  
26 contradicted his testimony at his pretrial deposition. His  
27 testimony on most of the issues was also contradicted by the  
28 physical evidence in the case. In particular, Mr. LeSure's

1 testimony that he did not pressure Ms. Andrus into signing the Quit  
2 Claim Deed is not credible. The Court finds more credible the  
3 testimony of Ms. Andrus that she was pressured by Mr. LeSure into  
4 signing the Quit Claim Deed on the promise of marriage, and that  
5 she only intended the Quit Claim Deed to be effective in marriage.  
6 This conclusion is buttressed by the fact that the Quit Claim Deed  
7 did not simply transfer a one-half interest in the Property to  
8 Ms. LeSure; instead, it transferred the Property to both Ms. Andrus  
9 and Mr. LeSure, without any indication of their respective  
10 percentage interests in the Property. Thus, the Court finds no  
11 evidence of an intent by Ms. Andrus to gift a one-half interest in  
12 the Property to Mr. LeSure in the absence of a marriage.

13       2. Undue Influence.

14       As a general rule, a party seeking to set aside an inter vivos  
15 gift has the burden of showing the gift is invalid. *Lewis v.*  
16 *Estate of Lewis*, 45 Wash. App. 387, 388, 725 P.2d 644, 646 (1986).  
17 However, if the recipient of the gift is in a confidential  
18 relationship with the donor, the burden shifts to the recipient to  
19 prove that a gift was intended and that it was not the product of  
20 undue influence. *Lewis* at 388-89, 725 P.2d at 646; *White v. White*,  
21 33 Wash. App. 364, 371, 655 P.2d 1173, 1176-77 (1982). A  
22 confidential relationship exists between two persons when one has  
23 gained the confidence of the other and purports to act or advise  
24 with the other's interest in mind. *McCutcheon v. Brownfield*, 2  
25 Wash. App. 348, 357, 467 P.2d 868, 874 (1970)(quoting *Restatement*  
26 of *Restitution* § 166d (1937)). The existence of undue influence is  
27 a factual question. *McCutcheon v. Brownfield*, 2 Wash. App. 348,  
28 356, 467 P.2d 868 (1970). The recipient must prove the absence of

1 undue influence by clear, cogent, and convincing evidence. *Id.* at  
2 356, 467 P.2d at 874. Evidence to sustain a gift between persons  
3 in a confidential relationship must show that the gift was made  
4 freely, voluntarily, and with a full understanding of the facts.  
5 *Id.* at 356, 467 P.2d at 874 (citing 38 Am.Jur.2d Gifts § 106  
6 (1968)). Undue influence exists when one party unfairly persuades  
7 the other. *In re Infant Child Perry*, 31 Wash. App. 268, 272, 641  
8 P.2d 178, 181 (1982). The Court must find undue influence if the  
9 result was produced by means that seriously impaired the free and  
10 competent exercise of judgment. *Id.* at 272, 641 P.2d at 181  
11 (quoting Restatement (Second) of Contracts § 177, comment b  
12 (1981)). The Court must weigh factors such as the unfairness of  
13 the resulting bargain, the unavailability of independent advice,  
14 and the susceptibility of the person persuaded. *Id.* at 272, 641  
15 P.2d at 181.

16       The Court finds that a confidential relationship existed  
17 between Ms. Andrus and Mr. LeSure. It is clear that in the early  
18 stages of the relationship, Ms. Andrus trusted Mr. LeSure and he  
19 exerted great influence over her. She hoped they would be married.  
20 Their finances were intertwined. Ms. Andrus bought Mr. LeSure a  
21 ring at Mr. LeSure's request as an outward sign that they intended  
22 to be married. She believed him when he claimed that he needed to  
23 be added to the title on the Property to ensure he had a place to  
24 live if something happened to her. She felt pressured by him to  
25 comply with his demand to put the title in his name. She did not  
26 obtain independent advice regarding the wisdom of signing a Quit  
27 Claim Deed. She received no consideration other than anticipated  
28 love and affection. The evidence proves Ms. Andrus and Mr. LeSure

1 were in a confidential relationship and that Ms. Andrus' position  
2 impaired her ability to exercise free and competent judgment.

3 Having concluded that the parties were in a confidential  
4 relationship, the burden is on Mr. LeSure to prove the absence of  
5 undue influence. This Court acknowledges that Ms. Andrus waited  
6 nearly one and a half years between signing the Quit Claim Deed and  
7 recording it with the King County Recorder. The Court is left with  
8 insufficient evidence, however, to infer any particular meaning  
9 from the delay. Neither party was able to persuade the Court that  
10 any inference should be drawn from the delay and the Court declines  
11 to draw any such inference. This Court finds that Mr. LeSure has  
12 not met his burden of proving the absence of undue influence, and  
13 it would be inequitable to allow him to benefit from the undue  
14 influence he had over Ms. Andrus. Consequently, the Court finds  
15 that the Quit Claim Deed was not effective to transfer a one-half  
16 interest in the Property to Mr. LeSure as a gift.

17 **B. The Committed Intimate Relationship Doctrine**

18 Having concluded that Ms. Andrus did not intend to make a gift  
19 of a one-half interest in the Property to Mr. LeSure, it is  
20 necessary to determine whether Ms. Andrus nevertheless intended to  
21 convert her separate Property into the equivalent of community  
22 property in a marriage. The recent Washington Supreme Court case  
23 of *Estate of Borghi v. Gilroy*, 167 Wash.2d 480, 219 P.3d 932 (2010)  
24 is instructive. In that case, the court analyzed prior Washington  
25 cases involving the character of separate and community property  
26 and clarified several important concepts. First, the court  
27 reaffirmed that the character of property as community or separate  
28 is established at acquisition. *Id.* at 484. Second, the court

1 determined that no presumption as to the character of property  
2 owned by spouses arises from the names on the title. *Id.* at 490.  
3 "[T]he name on a deed or title does not determine the separate or  
4 community character of the property or even provide much evidence."  
5 *Id.* at 488. Finally, the court held that clear and convincing  
6 evidence is required to overcome the separate property presumption.  
7 *Id.* at 491. The foregoing principles apply generally to the case  
8 at hand if the parties were in a "committed intimate relationship."

9 A committed intimate relationship (formerly meretricious  
10 relationship) under Washington State law is a "stable marital-like  
11 relationship where both parties cohabit with knowledge that a  
12 lawful marriage between them does not exist." *Connell v.*  
13 *Francisco*, 127 Wash. 2d 339, 346, 898 P.2d 831 (1995). The  
14 committed intimate relationship ("CIR") doctrine is an equitable  
15 doctrine intended to allow the trial court to make an equitable  
16 distribution of the property accumulated by the couple during the  
17 relationship, thereby preventing unjust enrichment when the parties  
18 end their relationship. *Connell* at 349, 898 P.2d at 836.

19 The Washington Supreme Court directs a Court to use a three  
20 step process to apply the CIR doctrine. *Id.* at 349, 898 P.2d at  
21 835-36. First, the Court must determine whether there is a CIR.  
22 If a CIR exists, the second and third steps are to evaluate the  
23 interest each party has in the property acquired during the  
24 relationship, and make a just and equitable distribution of the  
25 property. *Id.* at 349, 898 P.2d at 836.

26 Factors the court should consider in determining whether a CIR  
27 exists include continuous cohabitation, duration of the  
28 relationship, purpose of the relationship, pooling of resources and

1 services for joint projects, and the intent of the parties. *Id.* at  
2 346, 898 P.2d at 834 (citing *In re Marriage of Lindsey*, 101 Wash.  
3 2d at 304-05, 678 P.2d 328 (1984)). "These characteristic factors  
4 are neither exclusive nor hypertechnical." *In re Marriage of*  
5 *Pennington*, 142 Wash. 2d 592, 602, 14 P.3d 764, 770 (2000).

6       The relationship between Mr. LeSure and Ms. Andrus was clearly  
7 a CIR. They cohabited for nine years, they pooled resources, and  
8 they lived together in a stable, marital-like way. Their intent  
9 was clearly to live together in a long-term relationship and  
10 support one another financially and emotionally.

11       A trial court is not permitted to redistribute property  
12 acquired by each party prior to the relationship at the termination  
13 of a CIR. Instead, the Court must limit its distribution of  
14 property to property that would have been characterized as  
15 community property had the parties been married. *Connell* at 350,  
16 898 P.2d at 836. "Property ... acquired after marriage or after  
17 registration of a state registered domestic partnership by either  
18 domestic partner or either husband or wife or both, is community  
19 property." RCW 26.16.030. An asset is "separate property" if  
20 acquired before marriage, acquired during marriage by gift or  
21 inheritance, acquired during marriage with the traceable proceeds  
22 of separate property, or, in the case of earnings or accumulations,  
23 acquired during permanent separation. RCW 26.16.010.

24       Within a CIR there is a presumption that separate property  
25 remains separate property in the absence of sufficient evidence of  
26 the intent of the party owning the separate property to change its  
27 character from separate to community property. *Borghi, supra*.  
28 Separate property, however, may be changed into community property

1 by a proper conveyance or agreement. *Volz v. Zang*, 113 Wash. 378,  
2 383, 194 P. 409, 410 (1920); *In re Borghi*, 167 Wash. 2d 480, 489,  
3 219 P.3d 932, 937 (2010). In *Borghi*, the court noted that a quit  
4 claim deed may be sufficient evidence of a spouse's intent to  
5 convert separate property into community property. 167 Wash. 2d at  
6 485, 219 P.3d at 935.

7 The Property was Ms. Andrus' separate property before the  
8 relationship commenced. This Court finds that Ms. Andrus signed  
9 the Quit Claim Deed because she thought she and Mr. LeSure were  
10 going to be married and she wanted to make the Property community  
11 property as *in marriage*. To the extent that she intended to make  
12 the Property anything other than her separate property, it was  
13 clearly her intent that the Property be community property and not  
14 a gift to Mr. LeSure as his separate property. The Court further  
15 concludes that Ms. Andrus' intent was to make the Property  
16 community property only in the event the parties were actually  
17 married. Finally, even if the Property was considered community  
18 property that could be equitably divided, for the following  
19 reasons, the Court concludes that Ms. Andrus is entitled to an  
20 award of the Property solely in her name.

21 Mr. LeSure has steady employment earning \$60,000 annually.  
22 Ms. Andrus earns approximately \$34,000 per year. See Form B22C  
23 (Docket no. 12); Debtor's Schedule I (Docket no. 10). Ms. Andrus'  
24 financial problems have forced her into a bankruptcy proceeding;  
25 Mr. LeSure has not suffered the same fate. Mr. LeSure owns  
26 separate real property in Deer Park, Washington. Ms. Andrus has no  
27 real property other than the Property. Mr. LeSure and Ms. Andrus  
28 both benefitted from pooling resources during their relationship,

1 but Ms. Andrus was not able to sustain her lifestyle and went  
2 further into debt after the relationship ended.

3 Mr. LeSure submitted a reconstructed check register showing  
4 payments he testified were made for household expenses between  
5 August 1998 and February 2007. Ex. P-7, Ex. P-8, Ex. P-9.  
6 Ms Andrus challenged some of the expenses in that reconstruction,  
7 arguing that they were solely for Mr. LeSure's benefit. Exhibit  
8 P-9 lists the expenses by payee name. The Court finds that of the  
9 expenses listed, \$17,467.29 clearly fall into the category of  
10 community expenditures.<sup>3</sup> Giving Mr. LeSure the benefit of the  
11 doubt as to all the expenses listed in Exhibit P-9 brings the total  
12 expenses to \$23,348.26. In addition, Mr. LeSure paid a total of  
13 \$1,248.56 to Washington Mutual in 2004 for the first mortgage on  
14 the Property, and in 2005 he made a payment of \$4,138 to Key Bank  
15 to cure a default and prevent a foreclosure by Key Bank. Ex. P-3,  
16 Ex. P-4, Ex. P-5. Thus, he contributed between \$23,000 and \$28,000  
17 to the community expenses. Other than the three mortgage payments  
18 made by Mr. LeSure, Ms. Andrus paid all other payments due to both  
19 Washington Mutual and Key Bank. Ex. A-6, A-22, A-25. Although  
20 Ms. Andrus did not provide a total of all mortgage related payments  
21 she made, according to Ex. A-6, she paid a total of \$51,756.96 just  
22 in interest to Washington Mutual and in real estate taxes during  
23 the term of the parties' relationship (1997-2007). Ms. Andrus also  
24 submitted an invoice for \$8,816.50 for roof repair on the Property  
25 in 1999. Ex. A-7. Thus, her contributions to the community, not  
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27       <sup>3</sup> These expenses are evidenced by checks made payable to  
28 Paula Andrus, American Express, Cigarland, City of Kirkland,  
Costco, Fred Meyer, Owens Meats, Puget Sound Energy, Safeway, Savvy  
Salon, Schwann's, Shell, Texaco, Verizon, and Verizon Northwest.

1 including principal payments on the mortgages, insurance payments,  
2 and incidental household expenses, totals \$60,500.

The historical reconstruction of spending presented by the parties is less than perfectly clear or complete. From the reconstruction, however, the Court finds that Ms. Andrus contributed significantly more to the community than Mr. LeSure during their relationship, tipping the scales of equity in her favor.<sup>4</sup>

In light of all the foregoing factors, this Court finds that equity and fairness demand that 100% of the Property be awarded to Ms. Andrus. There is no clear evidence that she intended the Property to be treated as community property in the absence of a lawful marriage; and, even if the Property is treated as community property, the equities dictate that the Property be awarded to her.

## 15 || C. Alternative Theories

Having found that Ms. Andrus did not convey a one-half interest in the Property to Mr. LeSure, it is not necessary for the Court to consider Ms. Andrus' alternative theories of constructive trust and fraudulent inducement.

## **CONCLUSION**

21 For the foregoing reasons, the Court finds that plaintiff's  
22 action for partition of the Property should be dismissed and that  
23 the defendant is entitled to an order quieting title to the

25       <sup>4</sup> Each party called an expert to testify as to the current  
value of the Property. Neither expert testified, however, as to  
the value of the Property at the time the parties' relationship  
commenced, so the Court was unable to determine whether the  
Property increased or decreased in value during the relationship.  
The Court therefore determined that the valuation testimony was  
irrelevant to the issues to be resolved.

1 Property in her sole name. Counsel for the defendant may note for  
2 presentation a judgment consistent with this decision.

3                   ///End of Memorandum Decision///

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5                     
6                   United States Bankruptcy Judge  
7                   (Dated as of Entered on Docket date above)

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